IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 24TH NOVEMBER 2006 / 3RD AGRAHAYANA 1928

Crl.MC.No. 274 of 2005()

CC.765/2003 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER:

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1. T.P.MURALEEDHARAN, S/O.NARAYANA MENON, PUZHPANJALI, L.M.PAILEE ROAD, VYTTILA, POONITHURA VILLAGE.

2. SUKUMARI MURALEEDHARAN, W/O.T.P. MURALEEDHARAN. PUZHPANJALI, L.M.PAILEE ROAD, VYTTILA, POONITHURA VILLAGE.

BY ADV. SRI.TOM JOSE

RESPONDENTS:

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1. STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

ADDL.2. ERIC THOMAS, PALLATHU KIZHAKETHIL, KODUKULANGI POST, CHENGANNUR

IS IMPLEADED AS ADDITIONAL 2ND RESPONDENT AS PER ORDER DATED 20/9/06 IN CRL.M.A.NO.4890/06.

BY ADV. SRI.TOM JOSE (R2)
BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MUHAMMED.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 24/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.274 OF 2005

Dated this the 24th day of November, 2006.

ORDER

Are there circumstances justifying the invocation of the extraordinary inherent jurisdiction under Section 482 Cr.P.C in this case ? Under what circumstances can such powers be invoked ? Without and before claiming discharge, can the indictee be permitted to raise the plea for premature termination of proceedings as a matter of course before the High Court in proceedings under Section 482 Cr.P.C ? These questions arise for consideration in this Crl.M.C. The manner in which such pleas for premature termination are lightly raised before this Court obliges this Court to consider these questions in this Crl.M.C.

2. The petitioners are the accused in a prosecution under Section 420 read with 34 I.P.C. Proceedings have been initiated on the basis of a complaint filed by the defacto complainant. It is submitted that the complaint was filed initially before the Chief Minister and that complaint was forwarded to the police. It is thereafter, the police filed the final report after completing the investigation.

3. The crux or the gravamen of the charge is that the accused persons who are the chief executive and partners of a construction company induced the victim to part with an amount of Rs.5,75,000/- fraudulently on false and unintended promises. The learned Magistrate has taken cognizance on the basis of the final report submitted. The petitioners have appeared before the learned Magistrate. Charges have not been framed by the learned Magistrate. It is at that stage that the petitioners have come to this Court with this application under Section 482 Cr.P.C to quash the proceedings.

4. What are the grounds ? The learned counsel for the petitioners submits that the allegations are totally false and are made without any bona fides. In fact there is only a civil dispute between the parties and the complainant is not entitled as per the agreement between them to seek any other relief except return of the amount along with interest as stipulated in the agreement. This is the short plea.

5. I am of opinion that there are no circumstances justifying the invocation of the inherent jurisdiction available to this Court under Section 482 Cr.P.C. Cognizance has been taken on the basis of the police report. The learned Magistrate has chosen to issue process. At that stage, the learned Magistrate does not have the

advantage of hearing the accused persons. Law provides a course for such indictees to appear before the learned Magistrate and urge before the learned Magistrate that they are not liable to be proceeded further. At the stage of Section 239/240 Cr.P.C, the Code confers on the accused a right to urge before the Magistrate concerned that proceedings against them are liable to be prematurely terminated and they are entitled to be discharged. The Magistrate has the onerous responsibility of hearing the prosecutor and the indictee and to put an end to the prosecution, by discharging the accused, if circumstances justify such course.

6. Ordinarily and normally, this function must certainly be performed by the Magistrate concerned. In every case, this Court cannot attempt to do the duty which legitimately is that of the Magistrate under Section 239/240 Cr.P.C. This is not to say that in an exceptional case, in the interests of justice, powers under Section 482 Cr.P.C cannot be invoked, merely because the ordinary remedy under the Code exists and is available to the indictee. But a court must look for sufficient, satisfactory and compelling reasons to short circuit the procedure prescribed by the Code to prematurely terminate the proceedings by invoking the powers under Section 482 Cr.P.C. That cannot certainly be a routine exercise or a matter of course. That cannot be the daily diet. That can only be the remedy in an

exceptional case where failure or miscarriage of justice has to be prevented, invoking the extraordinary inherent powers. I need only mention that I am unable to find any such compelling reasons which can persuade this Court to resort to such extraordinary course in the facts and circumstances of this case.

7. This Crl.M.C is, in these circumstances, dismissed. But I may hasten to observe that at the stage of Section 239/240 Cr.P.C, the learned Magistrate must hear the petitioners and give them an opportunity to claim discharge. Their contentions will have to be considered and disposed of in accordance with law. The petitioners have already appeared before the learned Magistrate. I am of opinion that till such time, the petitioners can seek exemption from personal appearance from the Magistrate. When such application is made, appropriate order shall expeditiously be passed by the learned Magistrate and personal appearance of the petitioners need be insisted only if the learned Magistrate finds that charges are liable to be framed.

R.BASANT
JUDGE

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